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# In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. 392.

UNION PROPERTIES, INC.,

*Petitioner,*

v.

FRANK M. BRENNAN,
Successor Treasurer of Cuyahoga County,
and
RICHARD C. WERNER,
Administrator of Estate of Leslie R. Monroe,
Deceased,

*Respondents.*

## PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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October 29, 1956.

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No amount of argument can change the fact that the court below has cut down the jurisdiction given to the district courts by 28 U. S. C. § 1331.

The jurisdiction the Congress gave, the Court of Appeals has taken away.

### 1. Court Had No Right to Cut Down Jurisdiction Given by Congress.

It will not do to argue, as does respondent, that (page 12 of respondent's brief):

> "The Federal Constitution does not prohibit classification of real property for taxation. The states may, consistently with the Federal Constitution, classify property for taxation."

This is quite true.

But when a state chooses to put *all* real estate in a single class, subject to tax by a single uniform rule—as Ohio has done[1]—the taxing authority cannot, consistently with the Federal Constitution, tax one type of real estate on the basis of 100% of "true value" and another at 50% of "true value."

To do so is to deny equal protection.

That is this case.

And of it the Congress has given jurisdiction to the district courts under 28 U. S. C. § 1331. The Court of Appeals had no more right to deny that jurisdiction than it would have to grant a jurisdiction the Congress withheld.

**2. Remedy Inadequate to Cure Wrong Need Not Be Pursued.**

Respondent nowhere asserts that the state-provided administrative remedies are adequate to cure the wrong of discrimination. Respondent does so only obliquely by asserting that counsel argued in another case that the Ohio Board of Tax Appeals should consider the discrimination issue. (See respondent's brief, pp. 9-11.)

The short answer is that the Board of Tax Appeals rejected that argument.

Indeed, the Board of Tax Appeals rejected that argument in this very case. It held it had no jurisdiction of the issue of discrimination. (Petition, p. 8.)

The Supreme Court of Ohio rejects it also. *Rollman & Sons Co. v. Board of Revision of Hamilton County* (1955), 163 O. S. 363, 127 N. E. 2d 1. The Ohio rule is that the taxpayer complaining of discrimination may file

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[1] See petition for certiorari, p. 4, note 1.

(163 O. S. at page 366) "complaint as to undervaluations of the property of others * * *." This Court says that is no remedy. *Township of Hillsborough v. Cromwell* (1946), 326 U. S. 620, 623.

Manifestly, an administrative remedy inadequate to cure the wrong complained of need not be pursued.

## CONCLUSION.

The Court of Appeals has revised the jurisdiction given to the district courts.

This Court should review.

Respectfully submitted,

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October 29, 1956.